Thus the learned Judge found that on the balance of probability the whole of the land was sold absolutely and there were no odd lots unsold. Looking at the sale agreement we found no reason to disagree with the finding of the learned Judge on this point. We also feel that it is not easy to believe that an experienced lawyer like Mr. Mahindar Singh would have unwittingly or otherwise omitted very important provisions from the written agreement.

It is our view therefore that the appellant had no interest in the land capable of protection by caveat by virtue of Clause 4(a) of the Deed of Assignment. Neither has the appellant satisfied the court on the allegation of trust. Therefore the appellant had no right to lodge the caveat in the first place and much less any right to have the caveat extended.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Balendran, Chong & Bodi; Chooi & Co.*

DATUK ONG KIAN SENG & ORS. v. YEONG KOK CHUN & ORS.

[F.C. (Wan Suleiman, Mohamed Azmi & Hashim Yeop A. Sani F.JJ.) February 20 & April 30, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 198 of 1983]

Practice and Procedure – Orders for the detention and preservation of documents – Discretion of judge – Companies Act 1965, s. 157 – R.H.C. 1980, O.29 r.2(1).

In this case there was a dispute over the shareholdings and the directorship of two companies. The learned trial judge made an order granting the application to deposit with the Senior Assistant Registrar of the High Court all files, minutes and other documents together with the common seals of the two companies until the final disposal of the suit with liberty to apply. The appellants appealed against the order and it was argued (a) that the order negates the effect of the order of the High Court which allowed the appellants to carry on as the companies' lawful directors and (b) that the order was contrary to section 157 of the Companies Act, 1965 which imposes a statutory duty on the directors to have in their custody the documents and the common seals of the companies.

Held: (1) Order 29 rule 2(1) of the Rules of the High Court, 1980, confers power on the Judge to make the order as she did and it was not wrong in law for the judge to have exercised her discretion under the circumstances;

(2) section 157 of the Companies' Act does not override or exclude the power of the Court in appropriate cases to make an order (as done in this case) to protect the integrity of documents which will be relevant for the proper determination of the dispute;

(3) the order of the learned trial judge should not have included the depositing of the common seals of the company so as to affect the day-to-day running of the affairs of the company. Subject to this variation in the order of the trial judge, the appeal is dismissed.

Case referred to:

(1) *Re Saxton deceased* [1962] 1 W.L.R. 859.

FEDERAL COURT.

Dominic Puthucheary for the appellants

Sri Ram for the 1st and 2nd respondents.

Raja Abdul Aziz Addruse (*Philip Choong* with him) for the 3rd respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the Judgment of the Court): The appeal is against the order granting the application to deposit with the Senior Assistant Registrar of the High Court all files, minutes and other documents together with the common seals of the fourth and fifth appellant companies until the disposal of the suit with liberty to the parties involved to apply for orders from time to time. When the appeal came up for hearing before this court Mr. Dominic Puthucheary, counsel for the appellants elected to proceed only with ground 1 and ground 8 of the memorandum of appeal.

In ground 1 the appellants claimed that the order negates the effect of the order of the High Court which allowed the appellants to carry on as the companies' lawful directors. In ground 8 the appellants claimed that the order of the learned Judge was contrary to section 157 of the Companies Act, 1965 which imposes a statutory duty on the directors to have in their custody the documents and the common seals of the companies.

A brief summary of the background facts are necessary. The first and second respondents are the son and daughter-in-law respectively of the first appellant. The disputes between them and the others named are firstly on the shareholdings and directorships (of first respondent and of first and second appellants) in the fourth and fifth appellant companies (Civil Suit P839 of 1982) and secondly on the validity of a written agreement between the

intervener and the fifth appellant company (Civil Suit F310 of 1982). The fifth appellant company is the concessionaire of forest land in the State of Kelantan of about 40,000 acres and the intervener claims to be the contractor to carry out logging operations over a portion of the land. In Civil Suit P389 of 1982 the first respondent (plaintiff there) claims that at gun-point and under threat of physical harm he was coerced by the first appellant to sign certain documents pertaining to the transfer of his shareholdings and his resignation as director of the companies. It was also alleged that the first appellant unlawfully appointed the third appellant as secretary of the company to replace Messrs. K.C. Yeong & Co. (the applicant who asked for the order to deposit the documents and common seal with the court on March 8, 1983).

The order to deposit the documents and common seals of the companies with the court was granted on June 27, 1983. Apparently the order was not extracted and not exhibited. But from the minutes of the learned Judge including that of the June 27, 1983 it would appear that the order granting the application carried with it also an expressed condition that both parties be given liberty to inspect and make copies and to apply for orders from time to time.

The grounds given in the application for the order of the custody of the documents and common seals as set out in the affidavit explained that the application was made so that the documents and common seals in the possession of the secretary of the companies appointed before the dispute be deposited with the court in the interest of justice as well as in the interest of the companies. The intervener who would seem to support the application stated in the affidavit of one Kho Ah Tee dated May 10, 1983 that the question as to the validity of the agreement between the intervener and the fifth appellant company could only be determined by reference to certain documents in the possession of the same secretary of the companies.

The objection by the appellants to the application and the granting of the order was briefly stated in the affidavit of the first appellant dated April 12, 1983 in that the dispute between the first appellant and the two respondents should be of no concern to the applicant. According to the same affidavit the applicant had chosen to take sides by failing to comply with the request to hand over the seal and the documents belonging to the companies.

It is clear from the judgment (pp. 215-222) that the learned Judge was aware there was a dispute between the directors of the companies and that the issue as to who are the lawful directors is yet to be decided, and it was with the view to preserving the integrity of all the documents belonging to the companies that the order was granted.

We will now deal with ground 1 of the memorandum of appeal. The order of the High Court dated November 20, 1982 was an interlocutory order made in Civil Suit No. P839 of 1982 on application of the plaintiffs (respondent now) in that suit to restrain the first and second defendants there (first and second appellants now) from acting as directors of the companies until December 3, 1982. This order was vacated subsequently by another order of the court. The only question arising now is whether the court has power on the application of any party to the cause or matter to make orders for the detention and preservation of the documents and common seals of the companies.

Order 29 rule 2(1) of the Rules of the High Court, 1980 reads as follows:—

> "On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause of matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter."

The corresponding provision in the English Supreme Court Rules is also Order 29 rules 2(1). The *Supreme Court Practice 1979* at page 483 refers to Order 29 rules 2 and 3 as follows:

> "Quite apart from these rules the Court has an inherent power to make an order for the detention or preservation of the subject-matter of a cause and *of documents relating thereto.* This power can be invoked on an ex parte application in those rare instances where a plaintiff can show an extremely strong *prima facie* case, *that the damage, potential or actual, is very serious for the applicant,* that the defendant has in his possession incriminating documents or things and that there is a real possibility that he might destroy such material before an application *inter partes* can be made."
>
> (emphasis supplied)

For the purpose of preserving the integrity of documents in dispute or relevant in a dispute, rule 2(1) should in our view be construed to include any document the authenticity of which would be a crucial issue in an action. In *Re Saxton, decd.*[1]

the court dealt with the old Order 50 rule 3 where the language is similar to our Order 29 rule 2(1). Wilberforce, J. at page 861 construed this rule as follows:–

"The rule is not very accurately drafted but it does seem to me that it is sufficiently widely drawn to authorise the court to make an order for the delivery of any property or thing, including a document, to an expert for inspection in order that that expert may be able to provide full evidence on it. It seems to me that, for that purpose the court may authorise observation to be made of the document or an experiment to be tried. In my judgment there is power under the rule to make the order of the type here requested.

However, the question whether such an order should be made in any case is a matter of judicial discretion, and the order may be made on terms necessary to produce a just result.

In this case it is perfectly clear that the authenticity of this document is a crucial issue in the case, at any rate as regards the beneficial ownership of the shares which are referred to in the statement of claim."

In our view Order 29 rule 2(1) of the Rules of the High Court, 1980 confers power on the Judge to make the order as she did and it was not wrong in law for the Judge to have exercised her discretion under the circumstances.

As regards ground 8 of the memorandum of appeal, it should be noted firstly that section 157 of the Companies Act,1965 only directs that the books containing the minutes of the proceedings of any general meeting shall be kept by the companies at its registered office or its principal place of business and that such minutes shall be open for inspection to any member without charge. Any member shall be entitled under that section to be furnished within fourteen days on request in writing and on payment of the prescribed charge with the copy of any such minutes. Any company which contravenes this provision commits an offence.

In the present case it is obvious that there is a dispute over the shareholdings and the directorship of the companies. There is a dispute as to the control of the registered office of the companies. There is also the dispute as to who is the proper secretary of the companies. Apart from the first appellant and the first respondent there is only one other member of the companies. Under the circumstances it is obvious that the most appropriate repository for the documents would be the court. In our view section 157 of the Companies Act does not override or exclude the power of the court in appropriate cases to make an order (as done in this case) to protect the integrity of documents which will be relevant for the proper determination of a dispute.

Looking at the minutes of the trial Judge when the order was granted (pg. 214) and the reasoning contained in the judgment (pp. 218-219) it would seem to us that it was the documents which constituted the real subject of the order and not the common seals of the company. Thus the judgment sets out the reasoning as follows:–

"In the meantime, to maintain the status quo, the 1st and 2nd defendants have been declared to be persons to be in control and management of the 4th and 5th defendants subject to their submitting statement of accounts to the Court at the end of each month. But the issue as to who are the lawful directors of both companies is still there and will only be decided after the case have been heard and disposed of. It is with a view to preserving the integrity of all documents belonging to the 4th and 5th defendants that the applicants wish to have them deposited for safe-keeping with the Senior Assistant Registrar until after the issue over the directorship of both companies has been decided."

Therefore the order of the trial Judge should not have included the depositing of the common seals of the company so as to affect the day-to-day running of the affairs of the company. Subject to this variation in the order of the trial Judge the appeal is dismissed with costs.

Order accordingly.

Solicitors: *K.Y. Foo & Co.; Sri Ram, Zulkifly & Kumar; Philip Choong & Co.*

CHEAK YOKE THONG v. PUBLIC PROSECUTOR

[F.C. (Salleh Abas L.P., Abdul Hamid C.J. (Malaya) & Seah F.J.) May 4 & 5, 1984]

[Kuala Lumpur – Federal Court Criminal Application No. 4 of 1984]

Criminal Law and Procedure – Trial before Magistrate – Magistrate member of Judicial and Legal Service – Whether there could be bias or reasonable suspicion of bias.

Legal Profession – Lawyers briefing press on matters pending before the Court – Legal Profession (Practice and Etiquette) Rules, 1978, rr. 45, 46 & 47.

In this case the applicant had been charged with the offence of attempted robbery with a deadly weapon and